S.B.CIVIL WRIT PETITION NO.1984/2006

Jyani Devi
v.
The Executive Officer, Irrigation Division-II, Hanumangarh and others.

Date of Order :: 24th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.S.Sidhu, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The Executive Engineer, Water Resources, Division-II, Hanumangarh by an order dated 18.3.2006 debarred the land under cultivation of the petitioner from irrigation facility for a period of one year with a penalty of 20 times for alleged illegal use of water supply. By way of filing an appeal the petitioner assailed validity of the order dated 18.3.2006 before the appellate authority i.e. the Superintending Engineer, Water Resources Circle, Hanumangarh Junction with a contention that the order dated 18.3.2006 was passed without affording an opportunity of hearing to her. The appellate authority without examining contention of the petitioner rejected the appeal vide order dated 31.3.2006, hence this petition for writ is preferred.

While assailing validity of the orders dated 31.3.2006 and 18.3.2006 the contention of counsel for the petitioner is that no order discontinuing

irrigation facility with a penalty could have been passed without affording an opportunity of hearing to the petitioner as prescribed under the provisions of the Rajasthan Irrigation and Drainage Act, 1954 and the Rules framed thereunder.

Counsel for the respondents does not dispute that a notice should have been given to the petitioner as per Rule 31(3) of the Rajasthan Irrigation and Drainage Rules, 1955 (hereinafter referred to as “the Rules of 1955”) but in the instant matter such a notice was given to the respondent No.3 Iqbal Shah who was in actual cultivation of the land concerned in the capacity of Thekedar.

Heard counsel for the parties and also perused the documents available on record.

From perusal of document Anx.P/1 i.e. a notice issued by the Executive Engineer, Water Resources, Division-II, Hanumangarh Junction, it appears that the same was issued to the petitioner as well as to Shri Iqbal Shah, however, service of the same was not at all effected upon the petitioner and only a telephonic information was given to Shri Iqbal Shah by treating him a sub-tenant. The petitioner in memo of appeal specifically asserted that Iqbal Shah was not a sub-tenant appointed by her and she herself was cultivating the land, therefore, service of notice

should have been effected upon her. The appellate authority failed to examine this aspect of the matter. As a matter of fact the appellate authority rejected the appeal preferred by the petitioner in most mechanical manner. It was obligatory for the appellate authority to call for the record of subordinate authority i.e. the Executive Engineer, Water Resources, Division-II and to examine as to whether the notice was ever served upon the petitioner. The appellate authority should have also examined the fact as to whether Iqbal Shah was really a sub-tenant. The order passed by the appellate authority is apparently laconic and, therefore, deserves to be quashed. It is also not in dispute that service of notice was not effected upon the petitioner before passing the order dated 18.3.2006 by the Executive Engineer, as such the order aforesaid also suffers from the vice of violation of principles of natural justice and in specific terms the violation of Rule 31(3) of the Rules of 1955.

In view of the discussion made above, this petition for writ is allowed. The order impugned dated 18.3.2006 passed by the Executive Engineer, Water Resources, Division-II, Hanumangarh and the order dated 31.3.2006 passed by the Executive Engineer, Water Resources Circle, Hanumangarh Junction are quashed. The respondent No.1 is directed to decide the matter afresh by affording an opportunity of hearing

to the petitioner. For the purpose, the petitioner shall present herself in person or through authorised representative before the respondent No.1 on 5.9.2007 and on the same day submit her reply to the notice Anx.1. The respondent No.1 shall decide the dispute in accordance with law within a period of one month thereafter.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.